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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,068

09/29/2003

Richard J. Harp

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20995 7590 07/11/2007  
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EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3734

NOTIFICATION DATE

DELIVERY MODE

07/11/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

**Office Action Summary**

Application No.

10/675,068

Applicant(s)

HARP, RICHARD J.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-59, 64-81 and 106-110 is/are pending in the application.
- 4a) Of the above claim(s) 31-35 and 64-81 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 106-110 is/are allowed.
- 6) ☒ Claim(s) 19-30 is/are rejected.
- 7) ☒ Claim(s) 36-59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2003, 2004, 2006, 2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species 5, claims 19-30,36-59,106-110 in the reply filed on 6/14/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-21, 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ireland et al (5,411,513).

Ireland discloses a surgical instrument 10 (figures 1,2) having the limitations as recited, including: a housing 11 which has a blade 20 moved, a transmission 50 which converts rotary motion to reciprocating, linear motion (see abstract), where the transmission is coupled to the blade, where a first opening 14 in the housing through which a portion of the blade is exposed, where a cutting surface 18 exposed on the blade which configured to cut of tissue, and where the housing is concave at least a portion of its long axis (see fig. 2), and where the instrument further comprises at least one bearing retainer 65 which is able to reduce friction.

Claims 19-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Berke et al (6,048,345).

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Berke discloses a surgical instrument 30 (figures 1,2,6) having the limitations as recited, including: a housing 31 which has a blade 37 moved, a transmission 32 which converts rotary motion to reciprocating, linear motion, where the transmission is coupled to the blade, where a first opening in the housing through which a portion of the blade is exposed, where a cutting surface 44 exposed on the blade which configured to cut of tissue, where the housing is concave at best seen in fig. 8, and where the housing is convex in fig. 2, and where the housing is curved along its long axis at best seen at element 40 in fig. 2, where the instrument comprises at least one fiberoptic 35 in the housing which has an illumination light.

***Allowable Subject Matter***

3. Claims 106-110 are allowable over the arts of record.

Claims 36-59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art of record disclose or suggest where the transmission comprises a torus-like shape disposed on the rotary shaft, the torus like shape has a central axis that is angled relative to an axis of the rotary shaft.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN  
7/3/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER